

17 June 2020

Parliament of Australia – Senate
Ms Sophie Dunstone - Committee Secretary
Via email: legcon.sen@aph.gov.au

Dear Ms Dunstone

RE: Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2020

The Royal Australian College of General Practitioners (RACGP) thanks the House of Representatives Legal and Constitutional Affairs and Legislation Committee for the opportunity to provide feedback on the proposed Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2020 (Bill).

In summary, our submission provides information and feedback regarding:

- the RACGP
- the Bill as it relates to the RACGP *Standards for health services in Australian immigration detention facilities* (2nd edition)
- additional concerns that relate to health outcomes of people detained in immigration detention facilities.

1. About the RACGP

The RACGP is Australia's largest professional general practice organisation. We represent more than 41,000 members working in or towards a career in general practice in urban and rural areas. The RACGP is responsible for:

- defining the nature and scope of the discipline
- setting the standards, curriculum and training
- maintaining the standards for high-quality clinical practice
- supporting general practitioners (GPs) in their pursuit of excellence in patient care and community service.

As part of its role in maintaining the standards for high-quality clinical practice, the RACGP has developed a range of resources to support GPs who work in custodial environments, such as immigration detention facilities, and include:

- The RACGP [Standards for health services in immigration detention centres](#) (1st edition) (currently under review/ being updated).
- The RACGP [Standards for health services in Australian prisons](#) (1st edition) (currently under review/ being updated).
- [Custodial health in Australia: Tips for providing health care to people in prison](#).

The RACGP's Faculty of Specific Interests has two [Specific Interest Networks](#) whose interest and/ or expertise are important in considering the proposed amendment Bill. These include the Custodial Health and Refugee Health Networks.

Both networks include a national group of GPs who provide care in custodial settings or to people of a refugee background. These networks have been consulted as part of the process when preparing this submission.

2. The Bill as it relates to the RACGP Standards for health services in Australian immigration detention facilities (2nd edition).

The RACGP released its [draft Standards for health services in Australian immigration detention facilities \(2nd edition\)](#) (IDF Standards) for consultation in December 2019. These Standards have been developed to support health professionals, their employer organisations and the Australian Government Department of Home Affairs in their endeavours to provide high quality healthcare to people detained in Australian immigration detention centres.

The relevant sections of the proposed Bill that intersect with the provision of care by health service providers are:

2.1 Section 251A Searches of detainees etc. – prohibited things
Paragraph 3

“However, if a medication or health care supplement is determined under paragraph (2)(b), the medication or supplement is not a prohibited thing in relation to a particular person detained in an immigration detention facility if the medication or supplement has been prescribed or supplied for the person’s individual use by a health service provider authorised for the purpose by the person in charge of the facility”.

Feedback regarding the proposed Bill

The RACGP is pleased to see the support for the clinical advice and autonomy of the clinical team who provide healthcare to detainees within immigration detention centres in Australia. We will ensure that the IDF Standards provide advice to health services that ensures they include comprehensive documentation in a patient’s health record regarding medications and/ or supplements.

2.2 Section 252BA Searches of certain immigration detention facilities – general
Sub section ‘Search’, paragraph 1

“An authorised officer may, without warrant, conduct a search of an immigration detention facility operated by or on behalf of the Commonwealth, including, without limitation, a search covering any or all of the following:

- (a) accommodation areas;*
- (b) administrative areas;*
- (c) common areas;*
- (d) detainees’ personal effects;*
- (e) detainees’ rooms;*
- (f) medical examination areas;*
- (g) storage areas.”*

Feedback regarding the proposed Bill

The RACGP is concerned to see that ‘medical examination areas’ are included within the list of areas that can be searched within the proposed amendments.

These spaces are required to maintain the confidentiality and privacy of patients according to the [Standards for health services in Australian immigration detention centres](#) (1st edition) against which all immigration detention facilities are currently assessed as the 2nd edition is being developed¹. In particular, this inclusion is directly contrary to the following Criterion:

[Criterion 2.1.1](#) - Respectful and culturally appropriate care

Our service provides respectful and culturally appropriate care to patients.

[Criterion 2.1.3](#) - Presence of a third party

The presence of a third party observing or being involved in the clinical care during a consultation occurs only with the permission of the patient prior to the consultation.

[Criterion 5.1.1](#) - Health service facilities

Our service facilities are appropriate for a safe and effective working environment for patients and staff.

[Criterion 5.1.2](#) - Physical conditions conducive to confidentiality and privacy

The physical conditions in our service encourage patient privacy and confidentiality.

The RACGP recommends that the Committee remove the inclusion of medical examination areas as a defined space that is able to be searched.

3. Issues of concern as they relate to health outcomes of people detained in immigration detention facilities

3.1 Prohibited things

3.1a Definition of 'prohibited things' and breadth of Ministerial powers

The RACGP is concerned that under proposed section 251A, subsection 2(b), would allow the Minister to determine an item as prohibited if they are satisfied that '*possession or use of that thing might be a risk to the health, safety or security of persons in the facility, or to the order of the facility*'².

The defined scope of the term 'prohibited thing' includes a non-exhaustive list of items that could pose a risk and includes mobile phones, sim cards, and electronic devices. The RACGP is concerned that the provision does not require any standard by which the Minister is to consider whether a thing might be a risk and there is no guidance as to what would be a risk to the '*order of the facility*'.

The RACGP is concerned that the broad measures proposed in the Bill, in some circumstances, may lead to limitations on a person's human rights. The proposed Ministerial power may lead to restrictions on items that would not present a risk to safety and/ or security. The examples of 'prohibited things' demonstrate that the Minister only need to be satisfied that things 'might' pose a risk to safety or security or be a risk to the '*order of the facility*'. Such items could be determined 'prohibited things' on an unreasonable basis.

¹ The criterion identified within section 2.2 of this submission will be present in the updated version and will not become redundant on the release of the new edition.

² Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 20020, p. 3-4. Item 2, Schedule 1, paragraph 251A(2)(b)

The limited specificity of these provisions could allow a wide application, including where a 'prohibited thing' does not present a significant risk. The proposed amendment to subsection 252(4) refers to seizure of a weapon or escape aid, would reasonably present a risk, but which may not be the case for items such as mobile phones. Further, there is no allowance within the Bill for a detainee to contest a decision to make a personal item a 'prohibited thing'.

Therefore, the RACGP considers the definition of a 'prohibited thing' to be too broad in what it includes as prohibited. It is recommended that the definition of a 'prohibited thing' be more specific to items that would cause reasonable risk to the health and safety of people working and residing at the detention facility. Additionally, prohibited items should only be considered so based on an individual risk assessment and where there is evidence that the thing has been, or is likely to be, used in a way that risks safety or security.

3.1b Access to electronic devices

The Bill is designed to make bans on electronic devices, including mobile phones, as there is a concern that these devices could be used for unlawful activity. The RACGP does not believe that the reasons for such a ban are evidence-based or sufficient to justify such a collective and broad ban. If the intent of the amendment is to address unlawful activity, then the proposed amendment should address this specifically, rather than providing blanket powers in relation to electronic devices.

We do not believe that the Bill has demonstrated that such a measure be proportionate, especially where vulnerable individuals, particularly those who have been detained for prolonged periods rely on their mobile phones to stay in touch with family and friends as well as have access to legal advice and support.

Given the important role mobile phones play for individuals in detention to communicate with family, confiscation of the item has the potential to negatively impact on meaningful contact and contribute to a deterioration in mental health. The RACGP considers it essential for the mental health of the vulnerable individuals in detention that access to their support networks outside their places of detention be maintained. Removal of mobile phones and other communication devices will undoubtedly worsen their mental health and likely lead to further adverse health outcomes.

The proposed amendments of the Bill has the potential to limited or interfere with access to legal representation or advice. Further, the Bill makes no attempts to safeguard such rights.

The RACGP believes that in addition to creating a more specific and appropriate definition of a 'prohibited thing' as discussed in Section 4.1 of this submission, that a risk assessment be undertaken on a case by case basis to determine whether potentially illegal activity is being undertaken.

3.2 Powers of search, seizure and screening

3.2a Authorisation to search

The RACGP is concerned that the proposed amendment in Section 252 of the Bill provides an authorised officer the ability to undertake a search without a warrant or reasonable suspicion for any 'prohibited thing'.

We believe that this amendment goes above and the existing powers within the Migration Act, which already permits authorised officers to search and seize items determined to pose a risk to safety and security. Extending the powers to search under such a broad definition of a 'prohibited thing' providing little protection for individuals in detention who may have their persons or personal belongings intruded upon. Further, the Bill fails to define how searches are to be carried out.

The RACGP believes that the new amendments may violate the human rights of individuals in detention under Article 17 of the International Covenant on Civil and Political Rights, which provides that '*no one shall be subjected to arbitrary and unlawful interference with his privacy, family, home or correspondence*'³.

The RACGP believes that any power to search an individual in detention's person, property and accommodations should be limited to there being an at least a reasonable suspicion that some contraband is in their possession.

The Committee may wish to consider this amendment to be more aligned with the base standard recommended by the Australian Human Rights Commission, which advocates '*all searches of detainees, their accommodation or personal effects (such as mail) by staff respect the privacy of detainees and are therefore only conducted for sound security reasons and at reasonable times*'⁴.

Further, the RACGP strongly recommends that a provision be included that allows for the individual in detention to (i) request the gender of the person conducting the search and (ii) to allow such individuals to make a complaint if they believe that a search has been conducted without reasonable grounds.

3.2b Strip searches

The RACGP believes there needs to be safeguards included in the amendment that requires a reasonable suspicion for the need to undertake strip searches on detainees and that they are only conducted in exceptional circumstances. Further, because of the cultural sensitivities, humiliation and adverse mental health reactions from an already vulnerable cohort the RACGP recommends an independent oversight process be established.

As above, the RACGP strongly recommends that:

- an individual in detention has the right to request the gender of the person conducting the search
- to allow such individuals to make a complaint if they believe that a search has been conducted without reasonable grounds.

These processes would ensure appropriate protocols are applied in a reasonable and proportionate manner.

The Migration Act already contains a power to conduct strip searches of people in immigration detention in certain circumstances⁵. The amendment proposed by the Bill will significantly expand the circumstances under which strip searches may be conducted. The RACGP does not support an expansion of the powers and therefore circumstances under which strip searches are conducted.

3.2c Use of detector dogs

The RACGP is concerned that the Bill proposes to strengthen the screening and seizure powers enabling the use of detector dogs.

³ International Covenant on Civil and Political Rights <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

⁴ Australian Human Rights Commission. Human rights standards for immigration detention (2013), https://humanrights.gov.au/sites/default/files/document/publication/HR_standards_immigration_detention%20%284%29.pdf p. 10.

⁵ Migration Act s252A <https://www.legislation.gov.au/Details/C2019C00339>

There is nothing in the Bill that prohibits the use of sniffer dogs in a manner intended to intimidate or harass detainees.

Combined with the inadequate definition of a 'prohibited thing', the RACGP is concerned that there is the opportunity for disproportionate use of these powers and suggests a protocol to determine the scope of circumstances in which a dog is required for searches.

Due to the evidence of adverse physical and mental health impacts of detention, particularly prolonged detention, the RACGP has consistently called for an end to mandatory restrictive detention for people seeking asylum on humanitarian grounds. The proposed amendments in this Bill are not supported by the RACGP in their current form.

The RACGP thanks you for your consideration of this feedback. If more information is required, please contact Samantha Smorgon, Program Manager – Standards on 03 8699 0566 or via email samantha.smorgon@racgp.org.au.

Yours sincerely



Dr Harry Nespolon
President